

Falls Church, Virginia 22041

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File: D2010-228

Date: FEB 14 2012

In re: KEVIN M. GIBBONS, ATTORNEY

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

FINAL ORDER OF DISCIPLINE

ON BEHALF OF EOIR: Jennifer J. Barnes, Disciplinary Counsel

ON BEHALF OF DHS: Diane H. Kier  
Associate Legal Advisor

The respondent will be indefinitely suspended from practice before the Board, Immigration Courts, and Department of Homeland Security (the "DHS").

On June 1, 2011, the presiding disciplinary judge of the Supreme Court of Arizona temporarily suspended the respondent from the practice of law. Consequently, on June 9, 2011, the Disciplinary Counsel for the Executive Office for Immigration Review petitioned for the respondent's immediate suspension from practice before the Board of Immigration Appeals and the Immigration Courts. The DHS then asked that the respondent be similarly suspended from practice before that agency.

Therefore, on June 27, 2011, the Board suspended the respondent from practicing before the Board, the Immigration Courts, and the DHS pending final disposition of this proceeding. On November 1, 2011, the respondent was suspended from the practice of law for two years, retroactive to June 1, 2011, by the presiding disciplinary judge of the Supreme Court of Arizona.

The respondent was required to file a timely answer to the allegations contained in the Notice of Intent to Discipline but has failed to do so. *See* 8 C.F.R. § 1003.105 (2012); 77 Fed. Reg. 2011, 2014-15 (Jan. 13, 2012). The respondent's failure to file a response within the time period prescribed in the Notice constitutes an admission of the allegations therein, and the respondent is now precluded from requesting a hearing on the matter. 8 C.F.R. § 1003.105(2012); 77 Fed. Reg. 2011, 2014-15 (Jan. 13, 2012).

The Notice proposes that the respondent be indefinitely suspended from practicing before the Board and the Immigration Courts. The DHS asks that the Board extend that discipline to practice before it as well. Because the respondent has failed to file an answer, the regulations direct the Board to adopt the proposed sanction contained in the Notice, unless there are considerations that compel us to digress from that proposal. 8 C.F.R. § 1003.105(2012); 77 Fed. Reg. 2011, 2014-15 (Jan. 13, 2012).

The Board agrees that the EOIR Disciplinary Counsel's proposed non-identical reciprocal discipline of indefinite suspension is justified under the totality of the circumstances. *See Matter of Salomon*, 25 I&N Dec. 559 (BIA 2011)(proposed nonidentical reciprocal discipline justified under the totality of the circumstances); *Matter of Jean-Joseph*, 24 I&N Dec. 294 (BIA 2007)(increasing reciprocal discipline, based on misconduct before EOIR). That is, the EOIR Disciplinary Counsel states that indefinite suspension should be ordered:

[d]ue to [the] respondent's extensive pattern and practice of misleading Immigration Judges concerning his clients' eligibility for relief from removal, which resulted in significant delays to numerous immigration proceedings ... Because [the] respondent's conduct involved widespread dishonesty to Immigration Judges, the respondent should have to seek reinstatement under 8 C.F.R. § 1003.107(b) and prove that he 'possess[es] the moral and professional qualifications required to appear before the Board and the Immigration Courts' ... A different type of suspension is warranted so that EOIR can ensure that the respondent is no longer a threat to its adjudicatory system before reinstating him.

Notice of Intent to Discipline, at 3-4. The EOIR Disciplinary Counsel's contentions regarding the respondent's behavior is supported by the October 5, 2011, "Agreement for Discipline by Consent" signed by the respondent, which was reviewed by the presiding disciplinary judge of the Supreme Court of Arizona prior to his issuing the November 1, 2011, suspension order.

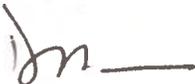
The Board will, therefore, honor the proposed discipline. As the respondent is currently under our June 27, 2011, order of suspension, we will deem the respondent's indefinite suspension to have commenced on that date.

ORDER: The Board hereby indefinitely suspends the respondent from practice before the Board, the Immigration Courts, and the DHS.

FURTHER ORDER: The respondent is instructed to maintain compliance with the directives set forth in our prior order. The respondent is also instructed to notify the Board of any further disciplinary action against him.

FURTHER ORDER: The respondent may petition this Board for reinstatement to practice before the Board, Immigration Courts, and DHS under 8 C.F.R. § 1003.107(2012). *See* 77 Fed. Reg. 2011, 2015 (Jan. 13, 2012).

FURTHER ORDER: As the Board earlier imposed an immediate suspension order in this case, today's order of the Board becomes effective immediately. 8 C.F.R. § 1003.105(d)(2)(2012). *See* 77 Fed. Reg. 2011, 2015 (Jan. 13, 2012).

  
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FOR THE BOARD